

E-Filed on 11/23/2009

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TO WELLS FARGO BANK SOUTHWEST, N.A. FORMERLY KNOWN AS  
WACHOVIA MORTGAGE, FSB, FKA WORLD SAVINGS BANK, FSB

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re

EUGENE G ANGELES AND LOVELYN A  
ANGELES,

Debtor(s).

Bankruptcy Case No. BK-S-09-30773-BAM  
Chapter 7

WELLS FARGO BANK, N.A.,  
SUCCESSOR BY MERGER TO WELLS  
FARGO BANK SOUTHWEST, N.A.  
FORMERLY KNOWN AS WACHOVIA  
MORTGAGE, FSB, FKA WORLD  
SAVINGS BANK, FSB'S MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
(11 U.S.C. § 362 and Bankruptcy Rule 4001)

Date: December 22, 2009  
Time: 1:30 p.m.

Wells Fargo Bank, N.A., successor by merger to Wells Fargo Bank Southwest, N.A.  
formerly known as Wachovia Mortgage, FSB, fka World Savings Bank, FSB ("Movant"), moves  
this court for an order terminating the automatic stay of 11 United States Code § 362 as to Movant,  
so that Movant may commence and continue all acts necessary to enforce its security interest in real  
property generally described as 9500 Steel Tree St, Las Vegas, Nevada 89143.

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On or about October 30, 2009, Eugene G Angeles and Lovelyn A Angeles ("Debtors") filed a voluntary petition under Chapter 7 of the Bankruptcy Code, and Timothy S. Cory was appointed as Chapter 7 Trustee. As a result of said filing, certain acts and proceedings against Debtors and the bankruptcy estate are stayed as provided in 11 United States Code § 362.

Movant moves this court for relief from stay under 11 United States Code §§ 362(d)(1) and 362(d)(2).

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I.**

#### **MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY UNDER 11 UNITED STATES CODE § 362(d)(2).**

#### **NO EQUITY**

11 United States Code § 362(d)(2) provides that relief from the automatic stay shall be granted if the debtor does not have any equity in the property and the property is not necessary to the debtor's effective reorganization.

In In re San Clemente Estates, 5 B.R. 605 (Bankr. S.D. Cal. 1980), the court stated that: § 362(d)(2) reflects congressional intent to allow creditors to immediately proceed against the property where the debtor has no equity and it is unnecessary to the reorganization, even where the debtor can provide adequate protection under § 362(d)(1). (Emphasis added).

Id. at 610 (emphasis added).

In In re Mikole Developers, Inc., 14 B.R. 524, 525 (Bankr. E.D. Pa. 1981), the court stated that in determining whether equity exists in the property for purposes of § 362(d)(2), all encumbrances are totalled, whether or not all the lienholders have joined in the request for relief from stay. The Ninth Circuit has concurred with this view in Stewart v. Gurley, 745 F.2d 1194 (9th Cir. 1984).

An appropriate cost of sale factor should also be added to determine if the debtor has any equity in the property. La Jolla Mortgage Fund v. Rancho El Cajon Associates, 18 B.R. 283, 289 (Bankr. S.D. Cal. 1982).

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1 On or about September 30, 2004, Debtors, for valuable consideration, made, executed and  
2 delivered to Movant a Note in the principal sum of \$304,800.00 (the "Note"). Pursuant to the Note,  
3 Debtors are obligated to make monthly principal and interest payments commencing November 15,  
4 2004, and continuing until October 15, 2034, when all outstanding amounts are due and payable.  
5 The Note provides that, in the event of default, the holder of the Note has the option of declaring all  
6 unpaid sums immediately due and payable. A true and correct copy of the Note is attached hereto as  
7 exhibit B and incorporated herein by reference.

8 On or about September 30, 2004, the Debtors made, executed and delivered to Movant a  
9 Deed of Trust (the "Deed of Trust") granting Movant a security interest in real property commonly  
10 described as 9500 Steel Tree St, Las Vegas, Nevada 89143 (the "Real Property"), which is more  
11 fully described in the Deed of Trust. The Deed of Trust provides that attorneys' fees and costs  
12 incurred as a result of the Debtors' bankruptcy case may be included in the outstanding balance  
13 under the Note. The Deed of Trust was recorded on October 11, 2004, in the Official Records of  
14 Clark County, State of Nevada. A true and correct copy of the Deed of Trust is attached hereto as  
15 exhibit C and incorporated herein by reference.

16 The obligation under the Note is in default as of June 15, 2009, for failure to make payments  
17 to Movant. As of November 10, 2009, the total obligation due and owing under the Note is in the  
18 approximate amount of \$350,543.06, representing the principal balance of \$338,741.81, interest in  
19 the sum of \$11,038.63, escrow advance in the amount of \$174.02, total fees in the amount of \$65.00,  
20 late charges in the amount of \$373.60, and recoverable balance in the amount of \$150.00. This is an  
21 approximate amount for purposes of this Motion only, and should not be relied upon as such to pay  
22 off the subject loan as interest and additional advances may come due subsequent to the filing of the  
23 Motion. An exact payoff amount can be obtained by contacting Movant's counsel. Further, Movant  
24 has incurred additional post-petition attorneys' fees and costs in bringing the instant Motion.  
25 Moreover, the total arrears under the Note are in the approximate sum of \$11,396.67, excluding the  
26 post-petition attorneys' fees and costs incurred in filing the instant Motion. Movant's Information  
27 Sheet as to the extent of liens and encumbrances against the Real Property is attached hereto as  
28 exhibit A and incorporated herein by reference.

**II.****RELIEF FROM STAY****LACK OF EQUITY**

Movant is informed and believes that, based on the Debtors' bankruptcy Schedules and Statements, the fair market value of the Property is approximately \$194,535.00. True and correct copies of the Debtors' bankruptcy Schedules "A" and "D" are collectively attached hereto as exhibit D and incorporated herein by reference.

Based on the above, Movant maintains that the equity in the Property is as follows:

Fair Market Value:	\$194,535.00
Less:	
Movant's Trust Deed	\$350,543.06
Green Tree Servicing's Trust Deed	\$39,553.00
Costs of Sale (8%)	<u>\$15,562.80</u>
Equity in the Property:	\$<211,123.86>

As a result, there is no equity in the Property for the bankruptcy estate. Moreover, since this is a Chapter 7 proceeding, there is no reorganization in prospect. As a result, Movant is entitled to relief from the automatic stay pursuant to 11 United States Code § 362(d)(2).

Debtors' Statement of Intent indicates it is the intent of the Debtors to surrender the Real Property in full satisfaction of Movant's secured claim. A true and correct copy of the Debtors' Statement of Intent is attached hereto as exhibit E and incorporated herein by reference.

**III.****MOVANT IS ENTITLED TO RELIEF FROM THE  
AUTOMATIC STAY UNDER 11 UNITED STATES CODE  
§ 362(d)(1).****CAUSE - LACK OF ADEQUATE PROTECTION**

Pursuant to the provisions of 11 United States Code §§ 361 and 362(d)(1), Movant is entitled to adequate protection of its interest in the Property.

Movant submits that adequate protection in this case requires normal and periodic cash payments, as called for by the Note, plus the repayment of any and all delinquent amounts owed to Movant, including all attorneys' fees and costs incurred in the filing of this motion.

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1 Movant is informed and believes that Debtors are presently unwilling or unable to provide  
2 adequate protection to the Movant and there is no probability that adequate protection can be  
3 afforded to Movant within a reasonable time.

4 By reason of the foregoing, Movant is entitled to relief from stay under 11 United States  
5 Code § 362(d)(1), based upon the failure of Debtors to provide adequate protection to Movant.

6 WHEREFORE, Movant respectfully prays for an Order of this court as follows:

7 1. Terminating the automatic stay of 11 United States Code § 362, as it applies to the  
8 enforcement by Movant of all of its rights in the Real Property under the Note and the Deed of Trust;

9 2. That the 10-day stay described by Bankruptcy Rule 4001(a)(3) be waived;

10 3. Granting Movant leave to foreclose on the Real Property and to enforce the security  
11 interest under the Note and the Deed of Trust, including any action necessary to obtain possession of  
12 the Property;

13 4. Permitting Movant to offer and provide Debtors with information re: a potential  
14 Forbearance Agreement, Loan Modification, Refinance Agreement, or other Loan Workout/Loss  
15 Mitigation Agreement, and to enter into such agreement with Debtors;

16 5. Alternatively, in the event this court declines to grant Movant the relief requested  
17 above, Movant requests that an Order for adequate protection be issued, requiring the Debtors to  
18 reinstate and maintain in a current condition all obligations due under the Note and Deed of Trust  
19 and all other deeds of trust encumbering the Real Property, including Debtors' obligations to pay  
20 when due (a) the monthly installments of principal and interest, as required under the Note;  
21 (b) tax/insurance obligations; and (c) any sums advanced by Movant on behalf of Debtors in order to  
22 protect Movant's interest in the Real Property, including all attorneys' fees and costs incurred in the  
23 filing of this motion;

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1           6.       That the attorneys' fees and costs incurred by Movant for filing the instant Motion be  
2 included in the outstanding balance of the Note as allowed under applicable non-bankruptcy law;

3           7.       That the requirements of Local Rule 9021 be waived; and

4           8.       For such other and further relief as the court deems just and proper.

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6 Dated: November 18, 2009

7                               /s/ JACQUE GRUBER  
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14                              BANK, N.A., SUCCESSOR  
15                              BY MERGER TO WELLS  
16                              FARGO BANK SOUTHWEST,  
17                              N.A. FORMERLY KNOWN  
18                              AS WACHOVIA MORTGAGE,  
19                              FSB, FKA WORLD SAVINGS  
20                              BANK, FSB  
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